

Accordingly, reconsideration and withdrawal of the rejection is respectfully requested.

## **DISCUSSION**

### Drawings

Applicant has canceled claim 7 by the present amendment, and as a result, the Examiner's objection to the drawings is now moot.

### Section 112 issues

Applicant has made changes to both the specification and to the claims, in an effort to more particularly point out and to distinctly claim what is regarded as the invention in the present application. Applicant's cancellation of claim 7 removes the Examiner's objection to the drawings, as noted, and also renders the objection to the specification moot.

Applicant respectfully suggests that, as presently amended, the specification and all of the claims are in full compliance with the requirements of 35 U.S.C. section 112.

### Section 103 issues

As a threshold matter, it should be noted that any reference which teaches away from the solution provided by an invention, rather than making that invention obvious, actually provides evidence of nonobviousness of the invention.

In the present amendment, applicant has amended each of the independent claims to particularly point out and distinctly claim that applicant's invention is directed to a **portable** filtering pump assembly, in contrast to the large and fixed installation disclosed in Carpenter. This change is fully supported by applicant's specification as originally filed.

For example, page 1, line 6 clearly states that the invention relates to a portable pump assembly, and page 5, lines 5-6 points out that in applicant's invention, the case member may include a battery case 38. The fact that the battery case is shown to be tubular and cylindrical, and

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may be provided with a threadably removable cap as discussed on page 5, lines 7-8 inherently suggests that 'flashlight' type batteries are consistent with the disclosed embodiment.

The Examiner has rejected Claims 1, 2, 4-6 and 8-10 under 35 USC section 103(a) as unpatentable over Carpenter in view of Griffin.

Applicant respectfully traverses this basis of rejection, and suggests that no references of record, either singly or in combination, teach a portable filtering pump assembly as presently claimed, and that further, skill generally available in the art would not lead to a person of ordinary skill creating applicant's claimed invention, using the references of record.

Carpenter is directed to a fluid pump system which can be alternated between high pressure and low pressure by opening a hand-operated gate valve. The pumping system of Carpenter is not portable, but instead, appears to be a permanent installation for use in an agricultural or other well bore, for powering both low-pressure irrigation and high-pressure sprinkler systems (column 1, lines 1-5). In column 2, lines 28-33 states that with the inventive design, the turbine pumps used could be spaced eight feet apart. That would make the total vertical length of the assembly depicted in Figure 1 of Carpenter well over sixteen feet. The pumping system of Carpenter includes a large top-mounted electric motor, a high pressure storage tank 12, a high-pressure check valve, and related plumbing to connect the sections together.

By contrast to the large-scale assembly of Carpenter, applicant's claimed invention is drawn to a portable filtering pump assembly. The motor of Carpenter is not disposed within a casing, as is claimed in applicant's claim 10. }

The Examiner also states, in the first full paragraph on page 5 of the Office Action, that Griffin discloses a filtering pump assembly (400) including a filter element (420). However, a

careful reading of column 5, lines 19-20 of Griffin reveals that reference numeral 400 is used to designate a **filter assembly for a baghouse**, rather than a filtering pump assembly as asserted by the Examiner. Applicant respectfully suggests that a filter assembly for a baghouse is not the same as a filtering pump assembly. A filter assembly for a baghouse does not include a pump.

Applicant respectfully points out that the Griffin reference is specifically directed to the art of bag house filtration, as suggested by the title of the reference, by the Field of the Invention discussion in column 1, lines 8-13, and also by the detailed description of the reference in column 5, lines 16-23.

The field of bag house filtration relates to filtering industrial smokestack emissions, industrial wastes, and/or and similar high-volume furnace gases before releasing them into the atmosphere. It is applicant's understanding and belief that in the design of a baghouse, a vacuum pump, for directing the flow of gases through the baghouse, is located in an entirely separate location remote from the baghouse filtration chamber, and is connected by ductwork to the room of the baghouse where the filter bags are located.

The McGraw-Hill Dictionary of Scientific and Technical Terms defines 'baghouse' as a large chamber or room for holding bag filters used to filter gas streams from a furnace.

In addition, the on-line reference "dictionary.com" defines 'baghouse' as meaning a chamber containing fabric filter bags that remove particles from furnace stack exhaust gases.

The scope contemplated for filter use in a baghouse is clearly quite different from the scope contemplated in applicant's patent application for a **portable** filtering pump assembly.

Further, the fact that the filter bag disclosed by Griffin is designed to lock into place in a circular hole formed within a flat plate member is a different structural application from the application of the filter bag disclosed by applicant, and the Griffin reference therefore teaches

away from applicant's claimed invention. See column 6, lines 9-20 of Griffin.

Applicant respectfully suggests that a person having ordinary skill in the art would have no motivation or incentive to combine the Carpenter and Griffin references, as they are from unrelated art areas.

However, even assuming for the sake of argument that the Carpenter and Griffin references are properly combinable, which is not conceded by applicant, the combination of the baghouse filter of Griffin et al. and the hydraulic pump of Carpenter would provide a filter bag which would be much larger than the screen member disclosed in Carpenter, and in which the filter bag necessarily included a locking collar of the type disclosed and claimed by Griffin.

① Removal of the locking collar of the Griffin bag would destroy the novel claimed feature of Griffin's invention. The combination of the Griffin filter bag and the Carpenter pump would not lead to applicant's claimed invention, but would instead provide an inoperable device, or at least a device in which the filtration aspect would be inoperable without further modification, which is not suggested by either of these references.

The Examiner has also rejected Claim 3 as unpatentable over Carpenter in view of Griffin and Hall. Applicant respectfully points out that while Hall discloses a resilient clamp 62 for surrounding a tube where the tube covers a conduit, and for forming a pressure tight seal between the tube and conduit, the clamp shown in Hall is described as "similar in form to an automobile radiator hose clamp" in column 3, lines 7-11 of Hall.

③ Applicant respectfully suggests that a clamp of the type described in Hall, in order to be sufficiently strong to form a pressure tight seal, would of necessity be too strong to be operable by the fingers of a user. Rather, the type of clamp shown and disclosed in Hall requires a specialized pair of pliers to operate.

Therefore, applicant traverses the Examiner's assertion, on page 7 of the Office Action, that Hall teaches an annular spring clip having a finger grip formed at each end thereof.

The U.S. Court of Appeals for the Federal Circuit has said that a reference must be viewed in its entirety, *Gore v. Garlock*, 220 U.S.P.Q. 303 (CAFC 1983); that it is impermissible to use the claims as a frame, and the references as a mosaic, to pick and choose selected pieces, out of context, to reconstruct the invention, *Northern Telecom v. Datapoint*, 908 F.2d 931 (CAFC 1990); that in order to combine references, the Examiner must show some motivation, suggestion, or teaching of the desirability of making the combination, *In re Dembiczak*, 50 USPQ 2d 1614, 1617 (CAFC 1999); and that the use of hindsight, in evaluating patentability, is improper, *In re Werner Kotzab*, 99-1231, 2000 U.S. App. Lexis 15504 (CAFC 2000); *Gore v. Garlock, supra*.

Applicant respectfully suggests that the examiner is evaluating applicant's invention using improper hindsight, and that the Examiner has shown no motivation, suggestion or teaching to combine Carpenter and Griffin or to combine Carpenter, Griffin and Hall.

Therefore, applicant requests reconsideration and withdrawal of the Examiner's rejection under 35 U.S.C. 103.

#### New Claims

Applicant introduces herewith new dependent claims 11-16 in an ongoing effort to distinctly claim the invention. Applicant respectfully requests substantive examination of these new claims.

Applicant respectfully suggests that as presently amended, all of the pending claims are believed to be allowable.

It is applicant's contention that no possible reading of the references, either singly or in

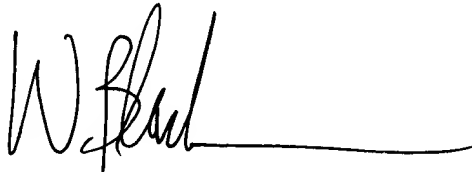
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combination, can be viewed as teaching applicant's claimed invention.

No new matter has been added by the present amendment.

For all of the above mentioned reasons, applicant requests reconsideration and withdrawal of the rejection of record, and allowance of the pending claims.

Respectfully submitted,



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